

TENTATIVE RULINGS for CIVIL LAW and MOTION

November 10, 2010

Pursuant to Yolo County Local Rules, the following tentative rulings will become the order of the court unless, by 4:00 p.m. on the court day before the hearing, a party requests a hearing and notifies other counsel of the hearing. To request a hearing, you must contact the clerk of the department where the hearing is to be held. Copies of the tentative rulings will be posted at the entrance to the courtroom and on the Yolo Courts Website, at www.yolo.courts.ca.gov. If you are scheduled to appear and there is no tentative ruling in your case, you should appear as scheduled.

Telephone number for the clerk in Department Fifteen: (530) 406-6941

TENTATIVE RULING

Case: **Capp v. Regents of the University of California**
Case No. CV CV 10-686

Hearing Date: **November 10, 2010** **Department Fifteen** **9:00 a.m.**

Plaintiff's request for judicial notice is **DENIED**.

The Court did not consider the arguments raised for the first time in the reply brief.

The demurrer to the second cause of action is **SUSTAINED WITH LEAVE TO AMEND**. (Govt. Code, § 12940, subd. (a); 2 C.C.R. §§ 7292.1, subd. (a), 7292.0, subd. (b) and 7292.2.) The complaint does not allege that defendants discriminated against plaintiff based on her marital status.

The demurrer to the third cause of action is **OVERRULED**. Defendant demurs to this cause of action on the ground that Article I, section 8 of the California Constitution does not provide a private right of action to redress employment discrimination. This broad contention is not supported by law. (*Strother v. Southern California Permanente Medical Group* (9th Cir. 1996) 79 F.3d 859, 871-873.) Unlike the plaintiff in *Himaka v. Buddhist Churches of America* (N.D.Cal. 1995) 919 F.Supp. 332, plaintiff alleges that her employment with the defendants was terminated. (Complaint ¶ 29.)

The demurrer to the fifth cause of action is **SUSTAINED WITH LEAVE TO AMEND**. (*Katzberg v. Regents of University of Calif.* (2002) 29 Cal.4th 300, 328-329.) As pled, this cause of action seeks monetary damages. (Complaint ¶ 38.)

The demurrer to the eighth cause of action is **SUSTAINED WITHOUT LEAVE TO AMEND**. (*Kim v. Regents of Univ. of Calif.* (2000) 80 Cal.App.4th 160; *Hill v. City of Long Beach* (1995) 33 Cal.App.4th 1684; *Kemmerer v. County of Fresno* (1988) 200 Cal.App.3d 1426.) As a public employee, plaintiff cannot bring a contract claim, including one for breach of the implied covenant of good faith and fair dealing, against defendants.

Plaintiff shall file a second amended complaint, if any, **by November 19, 2010**. If a second amended complaint is not filed by November 19, 2010, defendants shall file their answers to the first amended complaint by November 26, 2010.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: **Kendall v. City of Davis**
Case No. CV CV 10-2010

Hearing Date: **November 10, 2010** **Department Fifteen** **9:00 a.m.**

Defendant's request that the Court deem the demurrer to the complaint to be the demurrer to the first amended complaint is **GRANTED**. The Court, on its own motion, **CONTINUES** the hearing to **December 10, 2010**, at 9:00 in Department 15.

Plaintiffs' opposition, if any, must be filed and served by **November 29, 2010**.

Defendant's reply, if any, shall be filed and served by **December 3, 2010**.

If no hearing is requested, this tentative ruling is effective immediately. Defendant shall serve a copy of this tentative ruling on plaintiffs by **November 10, 2010**. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice, except as provided herein, is required.

TENTATIVE RULING

Case: **McBride v. Barry, M.D. et al**
Case No. CV PO 08-1298

Hearing Date: **November 10, 2010** **Department Fifteen** **9:00 a.m.**

This matter is **CONTINUED** on the Court's own motion to Wednesday, November 17, 2010, at 9:00 a.m. in Department 15.

TENTATIVE RULING

Case: **People v. \$1,341.00 (Michael Wagy)**
Case No. CV PT 10-2552

Hearing Date: **November 10, 2010** **Department Fifteen** **9:00 a.m.**

The hearing in this case must be by jury, unless waived by consent of all parties. (Health and Safety Code, § 11488.5, subd. (c)(2).) This matter is ordered to be tried in conjunction with the related criminal action, Yolo County Superior Court Case No. CR F 10-4355. (Health and Safety Code, § 11488.4, subds. (i)(3) and (i)(5).)

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: **Weyandt v. Cho**
 Case No. CV CV 10-1999

Hearing Date: **November 10, 2010** **Department Fifteen** **9:00 a.m.**

Defendant's demurrer to the complaint is **SUSTAINED WITH LEAVE TO AMEND**. (Code Civ. Proc., § 430.10, subd. (e).) Plaintiff fails to state facts sufficient to state the causes of action alleged in the complaint. (Lab. Code, §§ 3600 et seq.; *Janken v. GM Hughes Electronics* (1996) 46 Cal.App.4th 55, 80.) Plaintiff alleges that she was denied promotions to supervisor, demoted, her hours were reduced, and her clients were changed. (Complaint ¶ 7.) These are all actions concerning personnel management and are reasonably encompassed within the compensation bargain. Pleading of personnel management activity is insufficient to support a claim of intentional infliction of emotional distress, even if improper motivation is alleged. (*Janken v. GM Hughes Elec.*, supra, 46 Cal.App.4th at p. 80.) Allegations that the employer acted unfairly or outrageously or intentionally to cause emotional distress are not sufficient, by themselves, to permit a civil action outside the workers' compensation system. (*Cole v. Fair Oaks Fire Protection Dist.* (1987) 43 Cal.3d 148, 160.)

Plaintiff shall file her first amended complaint, if any, by **November 30, 2010**.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.